IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1701 OF 2003

The Chairman,
Maharahstra Public Service Commission
& Another. .. Petitioners
V/s
The State of Maharashtra & Ors. .. Respondents

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Mr.S.R.Atre for the Petitioners.
Mr.S.R.Nargolkar, AGP for Respondent No.1.
Mr.C.G.Gavnekar with Mr.Hiranandani and Ms.Deepa Sawant for Respondent Nos.2, 3 and 4.

CORAM: S.RADHAKRISHNAN &
DR.D.Y.CHANDRACHUD, JJ.

DATE : 22.11.2004.

P.C.:

1. Heard the learned Counsel for the parties. By this Petition, the Petitioners are challenging the Judgment and Order dated 25.9.2002 passed by the Maharashtra Administrative Tribunal, Mumbai Bench, whereby the original application filed by the original Applicants viz.Respondent Nos.2, 3 and 4 herein was allowed and the Petitioners were directed to reinstate the Respondent Nos.2, 3 and 4 with back-wages and continuity in service.

2. After hearing the learned Counsel for the parties and after perusing the Judgment and Order of the Maharashtra Administrative Tribunal which is impugned herein, we find that no proper evidence had been placed by Respondent Nos.2, 3 and 4 with regard to their statements which they themselves resiled from before the

Investigating Officer. In fact, the Respondent Nos.2, 3 and 4 themselves ought to have placed before the Maharashtra Administrative Tribunal the requisite material so as to enable the Maharashtra Administrative Tribunal to come to the correct finding and give a judgment thereon. In that behalf, it would be necessary to quote Paragraph Nos.30, 31 and 32 of the impugned Judgment and Order, which read as under:-

> "30. In the present case, the aforesaid two witnesses have resiled from their earlier statements made before the Investigating Officer. They did not stick to the earlier statements. The question of eliciting material admissiions in their cross-examination was not there. It is precisely because there was nothing on the record stated by these witnesses before the Enquiry Officer. When these witnesses had disowned their earlier statements made before the Investigating Officer, then the efficacy of their earlier statements ceases to have any probative value. In other words their efficacy is substantially impaired. That cannot be constituted or termed as a substantive piece of evidence."

> "31. In the result, therefore, we are inclined to hold that the approach of the Enquiry Officer to treat the previous statements made by the witnesses before the Investigating officer as gospel truth has resulted in causing miscarriage of justice. True, the principles of Evidence Act has no application but one has to adhere to the principles of natural justice in as much as the person who is likely to depose against the delinquent should step into the witness box in their presence and offer himself for the cross-examination. When at an earliest possible time these witnesses had disowned their earlier statements, to our mind, the efficacy thereof is substantial impaired."

> "32. There was much discussion before the Court as to at what time these witnesses had intimated their superior officers about the alleged threat levelled by the Investigating Officer. Their contention is that the statements were recorded by the Investigating Officer under duress. It is pointed out on behalf of the applicant that by writing a letter to the superior officer viz. to Respondent

No.2 the applicants had disowned their earlier statements. A specific date was pointed out during the course of the argument by Shri.M.D.Lonkar. A letter received by the Respondent No.2 was also shown to the Tribunal. It pertained to some other Department of the Commission but did not contain the alleged complaint said to have been lodged by the applicants. In any case, the date pointed out by Shri Lonkar was considered on behalf of the Respondent No.3 and 4 and it is urged that the record of that correspondence is already destroyed. In our opinion, failure to produce the copy of that complaint application before this Tribunal will not alter the position."

3. A perusal of Paragraph No.31 of the Judgment and Order of the Maharashtra Administrative Tribunal, as refered to above, clearly indicates that the Tribunal had proceeded on the basis that the Enquiry Officer's approach to treat the previous statements made by the witnesses (Respondent Nos.2, 3 and 4) before the Investigating Officer as gospel truth, was not proper and had resulted in causing miscarriage of justice. Whereas the Tribunal itself has also observed in Paragraph No.30 of its Judgment that when the Respondent Nos.2, 3 and 4 had disowned their earlier statements made before the Investigating Officer was not known, hence the efficacy of their earlier statements ceased to have any probative value. Apparently, the entire judgment of the Tribunal has proceeded on certain surmises and conjectures without knowing the exact date on which the said statements were resiled, and the consequences thereof.

4. Mr.Gavnekar, the learned Counsel for Respondent Nos.2, 3 and 4 states that the Respondent Nos.2, 3 and 4 have all the material to indicate as to when the previous statements were made and as to when & under

what circumstances they had resiled from those statements. If that be so, in the facts and circumstances of the case, It would be just and proper to quash and set aside the Judgment and Order passed by the Maharashtra Administrative Tribunal on 25.9.2002.

5. Under these circumstances, the Judgment and Order passed by the Maharashtra Administrative Tribunal dated 25.9.2002 is hereby quashed and set aside only on the above limited ground. Matter is remanded back to the Maharashtra Administrative Tribunal to decide it afresh after taking on record appropriate evidence with regard to the manner and dates on which the previous statements were resiled by Respondent Nos.2, 3 and 4 and also the effect of such resiling in the facts and circumstances of this case. The Maharashtra Administrative Tribunal is directed to decide the matter in accordance with law, strictly on its own merits, afresh.

6. Having regard to the fact that the Respondent Nos.2, 3 and 4 were dismissed from service in the year 1993, we direct the Maharashtra Administrative Tribunal to dispose of the said original application on remand, as expeditiously as possible, preferrably on or before 31st March, 2005.

7. Rule is made absolute in the above terms.

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